

EVICCTIONS IN BERKELEY

The following brochure is intended to provide property owners and tenants with an overview of the eviction process in Berkeley. It is important to be familiar with the eviction process if you are involved in an eviction action.

Berkeley's Rent Stabilization and Eviction for Good Cause Ordinance contains certain requirements before evictions may take place in Berkeley. This brochure is intended to answer general questions about the eviction provisions of the rent law, Measure G, Ordinance 5467-N.S.

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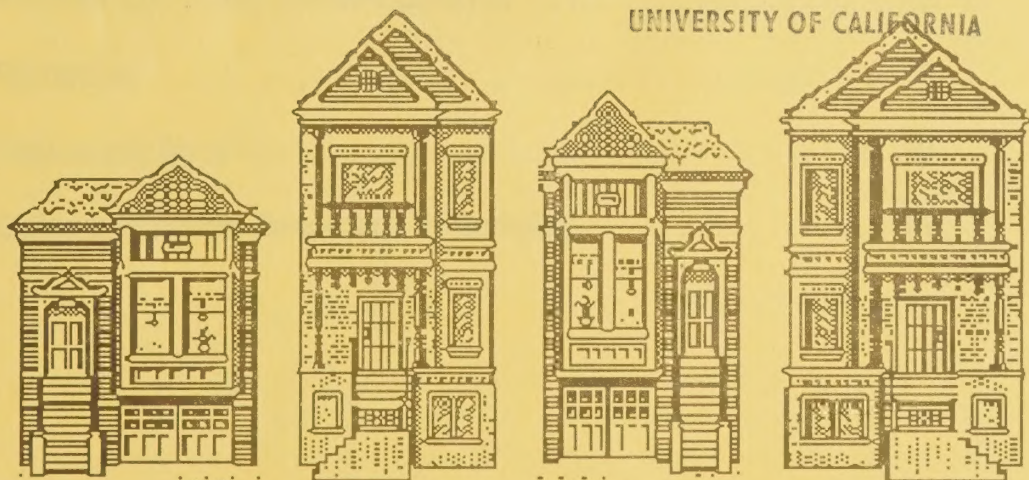


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EVICTIION CHECKLIST

In Berkeley, there are certain requirements that must be met before a tenant may be legally evicted.

1. The property must be registered with the Rent Stabilization Program: all fees must be paid, and the registration forms must be completed. The Rent Stabilization Program provides a Certificate of Registration upon request.
2. The owner must be in compliance with all aspects of the Rent Law, including, but not limited to, charging rents that do not exceed the maximum allowable level. The Rent Stabilization Program provides a Certificate of Permissible Rents upon request.
3. The eviction must be for one of the legal reasons listed in the Ordinance. Please refer to page 7 for a list of legal reasons.
4. The owner must allege compliance with Sections 8 (Registration) and 10 (Permissible Rent Levels) of the Rent Law as well as compliance with the Warranty of Habitability for all covered units on the property. (Questions concerning the Warranty of Habitability may be directed to the City of Berkeley's Department of Building Codes and Inspections, at 644-6504, or 644-6830).
5. A copy of all eviction notices must be filed with the Rent Stabilization Program within ten days after it is given to the tenant(s).
6. Retaliation Prohibited by the Property Owner.

It is illegal for a rental property owner to retaliate against a tenant who uses his/her rights under the Rent Stabilization Law. If actions against the tenant occur within six months after the tenant has used these rights, the actions of the owner are presumed to be retaliatory and illegal, and the owner must show that the action was not retaliatory. Retaliation may also be raised as a defense in

an eviction case, regardless of the amount of time that has elapsed between the tenant's assertion of her/his rights and the alleged act of retaliation. Retaliation includes harassment, attempts to reduce services or demands that a tenant move.

Knowing and willful violation of the Rent Stabilization Law is a serious offense. Tenants who are illegally evicted may sue in court for damages of \$750 or three times the actual damages, whichever is greater. The Rent Stabilization Program has the legal authority to intervene in eviction cases.

For more information, please contact the Public Information Unit of the Rent Stabilization Program during any weekday from 9:00 a.m. to 4:45 p.m. by calling 644-6128 or visiting the office at 2100 Milvia Street.

Evening **telephone** counseling is available to the public every Monday from 5:00 p.m. until 7:00 p.m.

EVICTIION PROCEDURE

In order to lawfully evict a tenant(s), the landlord must follow the following procedure:

NOTICE

1. The landlord must give a tenant a written notice telling the tenant why the landlord wants to evict the tenant. The reason given must be a good one and must be true. Please turn to page 7 for a list of legal reasons. (In certain limited situations such as in an owner-occupied rental unit or where the unit is occupied rent free, the rental unit is exempt from the eviction provisions of the Rent Ordinance and the landlord does not need to have just cause to evict the tenant. However, the landlord must still give the tenant a notice and must follow all of the steps described below. If the tenant is not sure that the property falls under the jurisdiction of the ordinance, the tenant may contact the Public Information Unit of the Berkeley Rent Stabilization Program, 2100 Milvia, at 644-6128, to confirm the status of the property.)

The notice must tell the tenant to leave within 3 or 30 days, depending on the reason given for the eviction. If the notice is for failure to pay rent, it must give the tenant the choice of either paying within 3 days or leaving. If the tenant pays the full amount within 3 days, no eviction action can be filed. If the tenant does not pay the rent, the landlord can proceed with the eviction as described below.

After the time given the tenant in the notice is up, the landlord cannot just throw the tenant out, but must sue the tenant in court.

Important - The tenant can be evicted even if the tenant is sick, pregnant, has small children, is on a fixed income, etc. The reasons why it is hard for the tenant to move are not defenses to an eviction.

LAWSUIT

2. If the landlord sues the tenant in Municipal court, someone will serve the tenant with a summons and complaint. This will usually consist of 3 or 4 typed pages and it will be titled "Summons and Complaint for Unlawful Detainer." The tenant should seek legal advice immediately. If the tenant does nothing, after 5 days the landlord can file papers and win the case automatically, and the tenant will have lost the chance to present evidence on any of the issues raised in the complaint. The tenant must therefore file papers with the court within 5 days if the tenant wants to tell his/her side of the story to the judge.

If a lawyer takes the tenant's case, the lawyer will file an answer with the court, and then a date will be set for a judge or jury to decide the tenant's case. If the tenant does not have a lawyer, the tenant may file an answer him or herself. Answer forms, as well as forms saying the tenant cannot afford to pay the filing fee, are available from the Court Clerk's Office where the action was filed. The tenant will also get a trial date after the answer has been filed. If the tenant wants a jury trial, the tenant must ask for one. The tenant and the landlord can enter into a written agreement to settle the case at any time before trial. If the tenant loses at trial, there will be a judgment against the tenant. The judgment could give the Sheriff the right to come and put the tenant out and may order the tenant to pay the landlord the back rent.

TRIAL

3. At the trial, the tenant can tell the judge or jury the reasons why the tenant thinks the complaint was untrue, or why the landlord should not get everything that the he/she is asking for. Even if the tenant loses the trial, he/she can ask the judge to let the tenant pay the judgment in installments or ask for more time to move if it would be a great hardship to be evicted immediately.

SHERIFF'S ACTION

4. After there is a final judgement against the tenant, if the tenant has not moved, the Sheriff will come and give the tenant a Notice to Vacate. The Notice will tell the tenant to be out in 5 days. If the tenant does not leave, the Sheriff will come at the end of the 5 days and forcibly put the tenant out.

Important - If a tenant lives in the unit who was not named as a defendant in the eviction papers, the person should inform the Sheriff in order to prevent his/her eviction.

JUDGMENT

5. If there is a judgment against the tenant for the back rent, and the tenant did not pay it, the landlord can try to make the tenant pay it any time for the next ten years, and maybe longer to satisfy the judgment. The landlord may have the Sheriff take the tenant's car, bank account, or other property or the landlord may garnishee the tenant's salary. If the tenant is not working and the tenant's car is not worth much, and the tenant's only property is furniture and clothing, it is unlikely the landlord can make the tenant pay until the tenant gets a job. If the Sheriff does take any of the tenant's property, or attempts to garnishee the tenant's salary, the tenant must be notified of restrictions on the garnishee, and the tenant should **see a lawyer immediately**.

LOCKOUT

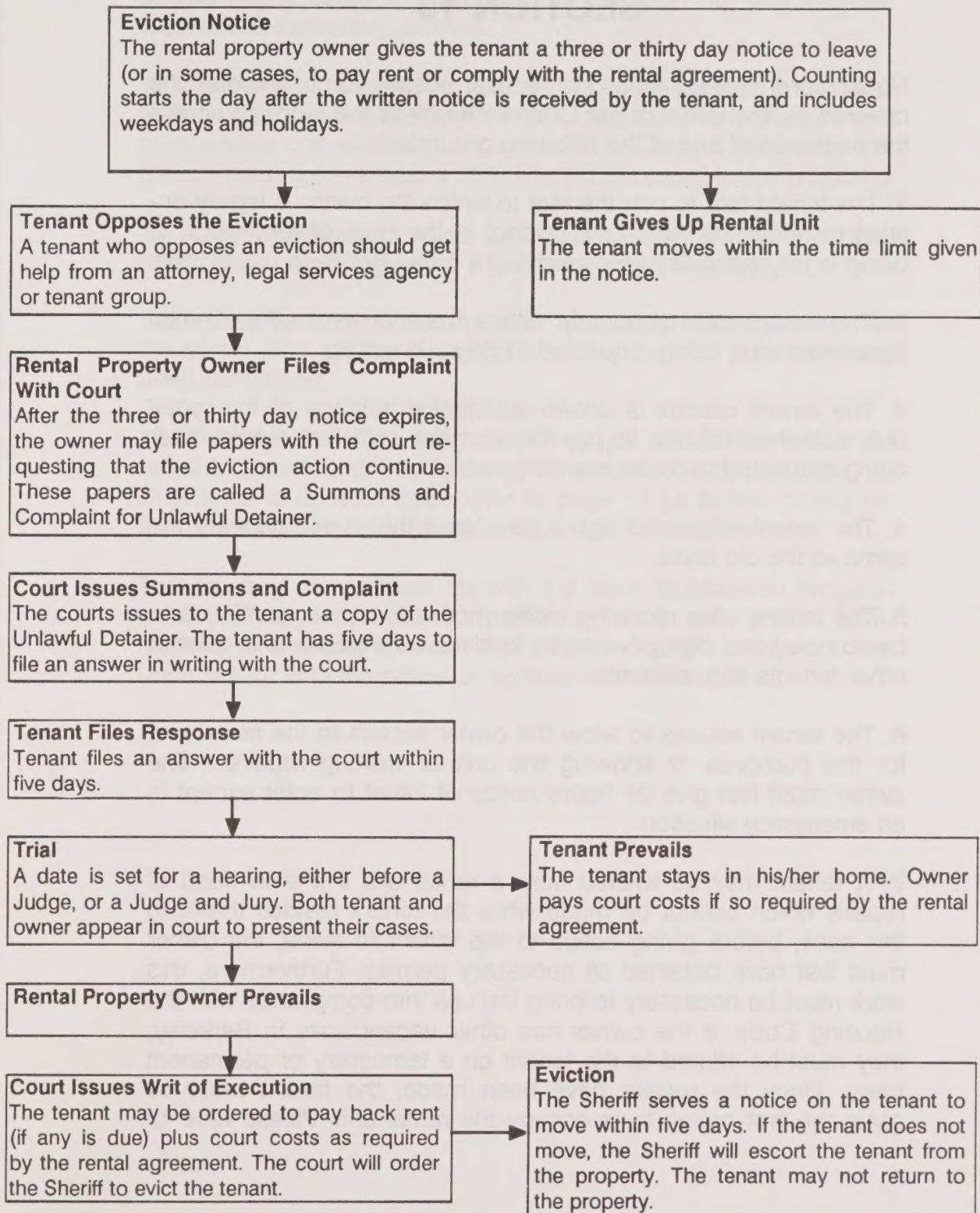
6. The landlord has no right to lock the tenant out or to physically prevent the tenant from continuing to live in the house -- only the Sheriff can do that. If the landlord does it, **call the police and see a lawyer at once**. Please turn to page 11 for additional information related to this matter.

UTILITY SHUT-OFF

The landlord has no right to shut off the tenant's gas, electricity or water to get the tenant to move. If he does it, **call the police and see a lawyer at once**. Please turn to page 11 for additional information related to this matter.

The Eviction Process

Eviction is a detailed legal process. Each step must be followed carefully. The time limits imposed by the law are critical. A tenant who fails to cure a violation of the lease in a three day notice case, or who fails to repond within five days to a Summons and Complaint, can lose his/her rental unit. Here is a brief flow chart description of the eviction process.



GOOD CAUSE REQUIRED FOR EVICTION UNDER MEASURE G, SECTION 13

No landlord shall be entitled to recover possession of a rental unit covered by the terms of the Ordinance unless the landlord shows the existence of one of the following grounds:

1. The tenant fails to pay the rent to which the owner is legally entitled to under the Rent Law (except in the case of rent which is being legally withheld) after receiving a 3 day Notice to pay or quit.
2. The tenant fails to comply with a material term of the rental agreement after being requested to do so in writing.
3. The tenant causes or allows substantial damage of the rental unit, and then refuses to pay for or make sufficient repairs after being requested to do so in writing.
4. The tenant refuses to sign a new lease that is substantially the same as the old lease.
5. The tenant, after receiving written notice to cease, continues to be so noisy and disruptive so as to disturb the peace and quiet of other tenants and residents.
6. The tenant refuses to allow the owner access to the rental unit for the purposes of showing the unit or making repairs. The owner must first give 24 hours notice of intent to enter except in an emergency situation.
7. A tenant may be evicted from a rental unit if it is in need of repairs which cannot be made while the tenant resides there. In this case, before giving notice to the tenant to leave, the owner must first have obtained all necessary permits. Furthermore, this work must be necessary to bring the unit into compliance with the Housing Code. If the owner has other vacant units in Berkeley, they must be offered to the tenant on a temporary or permanent basis. Once the repairs have been made, the tenant must be given the first option to re-occupy the rental unit. Please refer to

page 13 for further details related to relocation benefits available under this reason.

8. The owner seeks in good faith to demolish the unit and has received all necessary permits.

9. The owner, the owner's husband or wife, parents or children wish in good faith to occupy the unit, and there is no vacant and comparable unit available. An owner who evicts a tenant for this reason must hold at least a 50% interest of record in the property.

10. A lessor wishes to move back into a sub-leased unit as permitted in the rental agreement with the current tenant(s).

11. A tenant refuses to move out of temporary housing offered by the owner after repairs being done on the tenant's prior unit have been completed.

12. The owner wishes to permanently go out of the residential rental business and has followed all procedures required by the Ordinance to do so. Please refer to page 13 for further details related to relocation benefits available under this reason.

The property owner must file with the Rent Stabilization Program a copy of any notice of termination, notice to quit, and/or Summons and Complaint, within ten (10) days after the tenant has been served with the notice or summons and complaint.

INVOLVEMENT BY THE RENT STABILIZATION PROGRAM IN EVICTIONS

The Rent Stabilization Program currently sponsors periodic general information workshops which include the area of evictions.

The Program issues press releases, utilizes information bulletins and conducts educational outreach through various programs to provide information to the general public related to evictions. The Program is available to provide information on the grounds for eviction and the eviction process under both the Berkeley law and state law to tenants and property owners who request such services.

In addition, upon receiving a copy of a notice to vacate served upon a tenant, the Program issues a letter of response. Both the tenant and the property owner will receive a copy of the letter of response informing both parties of:

- a. the applicable provisions of the ordinance, a summary of the eviction procedure followed by the courts, and a list of referral agencies;
- b. whether the notice to vacate complies with the applicable provisions of the Law;
- c. whether the property is properly registered, including payment of all registration fees and penalties; and
- d. how the tenant can check with the City's Building Codes and Inspection Department to confirm whether there are any code compliance inspection reports outstanding or on file with that office, and to obtain the services of a building inspector should any Warranty of Habitability problems exist.

NOTICE TO QUIT REQUIREMENTS FOR OWNER/RELATIVE OCCUPANCY EVICTIONS

The Berkeley Rent Ordinance requires the landlord to state in the Notice to Quit a good cause for eviction under the Law. Berkeley Municipal Code Section 13.76.130(B). Regulation 1310 requires that every element of the good cause for eviction shall be stated in writing in the Notice to Quit to the tenant, and that the landlord's failure to do so is a defense to the eviction action.

The following are the essential elements for an owner/relative occupancy eviction under Section 13.76.130 (A)(9) of the Ordinance, **all of which** must be stated in the Notice to Quit:

- 1) The landlord is an owner of record holding at least a 50% interest in the property;
- 2) The landlord is seeking to recover possession of the rental unit for the use and occupancy as a principal residence by the landlord, or the landlord's spouse, child or parent;
- 3) The name and relationship of the intended occupant to the landlord must be stated (Regulation 1380);
- 4) The landlord is acting in good faith;
- 5) No comparable unit in the property was vacant and available for the 90-day period prior to the date of the Notice to Quit, or is or will be vacant and available prior to the trial in the case.

If any of the above elements are not stated in the Notice to Quit, the notice may be found defective by the Court. For further information, you should contact an attorney or the Public Information Unit of the Rent Stabilization Program, 2100 Milvia Street at 644-6128, weekdays from 9:00 a.m. to 4:45 p.m.

SELF-HELP EVICTIONS

A landlord who wishes to evict a tenant may not take the law into his or her own hands and use "self-help eviction" procedures. Under California landlord/tenant law, landlords must follow a strict legal process to evict a tenant which includes giving proper notice and, in Berkeley, having "just cause" to terminate a tenancy. A landlord who unlawfully evicts a tenant by engaging in one of the actions set forth below may be liable for actual and punitive damages.

LOCK-OUTS AND UTILITY CUT-OFFS

When undertaken by a landlord with the intent to terminate occupancy of a rental unit, the following actions are illegal under California Civil Code Section 789.3:

- 1) cutting off or interrupting a tenant's utility service.

The utilities covered by this statute include, but are not limited to, water, heat, light, electricity, telephone, gas, elevators and refrigeration, regardless of whether the landlord or tenant pays for the service, and regardless of whether the landlord cuts off the utility directly or indirectly (e.g., by not paying the utility bill).

- 2) Preventing a tenant from gaining reasonable access to his/her rental unit by changing the locks or using a bootlock, or by any other similar method or device. This protection against lockouts also applies to tenants who live in residential hotels.

- 3) Removing outside doors or windows on a tenant's unit.

- 4) Removing a tenant's personal property or furnishings without the tenant's prior written consent, except after an abandonment of a unit by a tenant.

The acts in (2) (3) and (4) above, are crimes, so a tenant may also call the police.

FORCIBLE ENTRY AND FORCIBLE DETAINER

Landlords are also prohibited, under California Civil Procedure Section 1159 (Forcible Entry), from engaging in the following self-help eviction procedures:

1) breaking open doors, padlocks, windows or other parts of a unit, or bringing about any kind of violence or terror to induce a tenant to vacate the premises; or

2) after peaceably entering a tenant's unit, turning out the tenant by force or menacing conduct.

Using a pass key to enter a unit is considered "forcible entry" and is also prohibited under CCP Sect. 1159.

CCP Sect. 1160 (Forcible Detainer) similarly prohibits:

1) the unlawful holding/ possession of a rental unit through violence or threats, whether or not it was acquired peaceably; or

2) the unlawful entering of a rental unit at night or while the tenant is absent, and refusing to surrender for 5 days after a demand to do so.

REMEDIES

In addition to actual damages, a landlord may also be liable for an amount not to exceed \$100 for each day or partial day which the landlord remains in violation of Civil Code 789.3. However, in no event shall less than \$250 be awarded to the tenant for each separate cause of action.

Actual damages, for which a landlord is liable in a civil damages suit could include such things as compensation for hotel expenses incurred by a tenant when s/he was forced to leave a unit because of a utility cut-off, lock-out, etc.

In addition, a tenant may seek injunctive relief to prevent continuing or further violation of the statute while a damages suit is pending. The statute also authorizes an award of a "reasonable attorney's fee" if the tenant wins the suit.

In the event of a forcible entry or a forcible detainer, a summary court proceeding to regain possession of the rental unit is available to the tenant. The tenant may also seek actual and punitive (treble) damages, if malice is alleged and proven.

RELOCATION BENEFITS

ORDINANCE #5756 N.S.

A tenant household required to move due to fumigation or rehabilitation work may be eligible for relocation payments if:

1. The city has determined that the household cannot safely occupy the unit during rehabilitation; and
2. The tenant household did not cause the need for rehabilitation.

For additional information regarding this Ordinance please contact the Central Relocation Agency, 2180 Milvia Street, 2nd Floor, 644-6001.

ELLIS ORDINANCE - #5751 N.S.

This state law provides residential property owners with the right to **permanently** go out of the rental business, that is, property owners may decide they no longer want to rent their residential property to tenants for at least the next 10 years. In order to go out of business in Berkeley, the landlord must follow several specific requirements. These include:

1. All units on the property must be taken off the rental market. The law does not permit a property owner to remove only some of the units from the rental market.
2. The owner must give the tenants at least 6 months notice to vacate.
3. Within 5 days of serving the notice to vacate to the tenants, the owner must deposit \$4,500.00 in relocation benefits per unit into an escrow account. The entire amount shall be paid to the tenant(s) as relocation assistance.
4. If the property is re-rented within 10 years, the property owner must offer the tenant the right to reoccupy the premises, at a rent controlled by the Rent Ordinance.
5. There are several filing requirements including the filing of Notice of Constraints on the Property, with the Alameda County Recorder's office.

To obtain more information regarding specific requirements to evict a tenant under this ordinance, please contact the Rent Stabilization Program by dialing 644-6128.

GUIDE TO EVICTION SERVICES IN BERKELEY

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ORGANIZATION	WHO SERVED	FEE	WAIT FOR SERVICE	MAKES REFERRALS	OFFERS COUNSELING	OFFERS REPRESENTATION IN COURT	HELPS FILE LEGAL PAPERS	COMMENTS
Alameda County Apartment House Owners 1322 Webster Street, Suite 312 Oakland, CA 893-9873	Members only	Yes	No	Yes	Yes	No	No	Free to members; owners only; fee for membership.
Alameda County Bar Association Lawyer Referral Service 405-14th Street Oakland, CA 893-7160	No Restrictions	Yes	2-3 days	Yes	No	Yes	Yes	\$20 fee for 1/2 hour consultation.
Asian Law Caucus 1322 Webster Street, Suite 410 Oakland, CA 835-1474	Tenants only	Sliding scale	Up to 1 week	Yes	Yes	Yes	Yes	Bi-lingual Chinese (Cantonese-Mandarin), Tagalog, other referrals for landlords by request.
ASUC Renter Assistance Project For Students U.C. Berkeley Campus 309 Eshleman Hall Berkeley, CA 642-1755	U.C. Berkeley Students	No	No	Yes	Yes	No	No	
Berkeley Black Property Owners' Association P.O. Box 3595 Berkeley, CA 527-7129	Members only	Yes	Yes	Yes	Yes	No	No	General meetings every third Wednesday of month, 6:30-8:00 p.m., S. Berkeley YMCA (Russell at California Street).
Berkeley Dispute Resolution Service 1721-63rd Street Berkeley, CA 428-1811	Berkeley Residents	No	No	Yes	No	No	No	Mediation services for landlords and tenants; refund of security deposits, etc.
Berkeley Gray Panthers 1325 Grant Street Berkeley, CA 527-3790	No Restrictions	No	No	Yes	Yes	Yes	Yes	Any person in need; generally seniors.
Berkeley Property Owners Association 1940 Virginia Avenue Berkeley, CA 540-8668	Members only	Yes	No	Yes	Yes	No	No	Free to members only; owners only.



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ORGANIZATION	WHO SERVED	FEE	WAIT FOR SERVICE	MAKES REFERRALS	OFFERS COUNSELING	OFFERS REPRESENTATION IN COURT	HELPS FILE LEGAL PAPERS	COMMENTS
Berkeley Tenants Union 2022 Blake Street Berkeley, CA 843-6601	Tenants only	Yes			Yes			Public workshop free, Tuesday evenings, 7:30 p.m.; fee for membership, counseling and other services.
California State Department of Fair Employment and Housing 1111 Jackson Street, Room 5040 Oakland, CA 4095	No Restrictions	No	Yes	Yes	Yes	No	No	Advice and representation in discrimination cases; call for consultation and appointment.
East Bay Tenants Bar Association 1440 Broadway, Suite 1000 Oakland, CA 452-1300	Tenants only	Yes	No	Yes	Yes	Yes	Yes	
Housing Rights, Inc. 6421 Telegraph Avenue Oakland, CA 658-8766	No Restrictions	No	No	Yes	Yes	Yes	No	Housing listings and emergency shelter for families with children; no legal counseling.
Legal Aid Society 2357 San Pablo Avenue Oakland, CA 465-3833	Low income only	No	No	Yes	Yes	if need	if need	Cases taken on merit and priority, Intake Mondays from 1:30-3:30 p.m. Thursdays 9:30-11:30 a.m. and by appointment. Outreach office every Wednesday from 9:00 a.m. to noon at the West Berkeley Senior Center, 644-6036.
Legal Assistance for Seniors 1440 Franklin Street, Suite 206 Oakland, CA 3040	Over 60, Alameda County residents	No	3-4 days	Yes	Yes	Yes	Yes	Cases taken on merit.
Legal Counseling for Students U.C. Berkeley Campus Berkeley, CA 642-4980	U.C. Berkeley Students	No	No	Yes	Yes	No	No	
Pro Per Legal Education Project 2100 Martin Luther King, Jr., Way Berkeley, CA 845-0699	No Restrictions	No	No	Yes	Yes	No	No	Mondays only, 11:00 a.m. to 4:00 p.m.; leave message at 848-3378; Spanish and East Indian languages.

The Rent Stabilization Program offers comprehensive information and housing counseling to tenants and rental property owners about the eviction section of the Berkeley rent law and other aspects of the Ordinance. In addition, the Rent Stabilization Board has the legal authority to intervene in key eviction cases. Cases being considered for intervention are first reviewed by the Eviction Committee before being forwarded to the Rent Stabilization Board.